

Opinion of the Court.

UNITED STATES *v.* DENVER AND RIO GRANDE  
RAILROAD COMPANY AND OTHERS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLORADO.

No. 4. Argued October 10, 1893.—Decided October 23, 1893.

In this case the court follows its rulings in No. 3, *ante*, 1.

THE case is stated in the opinion.

*Mr. Solicitor General* for plaintiff in error.

*Mr. Edward O. Wolcott*, (with whom was *Mr. Joel F. Vaile* on the brief,) for defendants in error.

MR. JUSTICE JACKSON delivered the opinion of the court.

This case is controlled by the decision of this court rendered in the case of the *United States v. Denver and Rio Grande Railway Co.* The pleadings and the agreed statement of facts<sup>1</sup> present substantially the same questions as are discussed

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<sup>1</sup> *Agreed Statement of Facts.*

It is agreed:

1. That the timber sued for in said action was cut by J. J. Carpenter, X. L. Carpenter, and H. S. Carpenter, as agents of the Denver and Rio Grande Railroad Company, for the use of said company.

2. That the complaint in said action shows the amount of timber cut, and that the same was used as railroad ties.

3. That said timber was cut upon public, unoccupied, and unentered lands of the United States, in Gunnison County, Colorado.

4. That the lands from which said timber was cut were along, near, or adjacent to the line of railway of said company.

5. That one-half of the timber cut, as aforesaid, was cut on lands adjacent or near to the portions of said line of railway which were constructed prior to June 8th, 1882, and the other half of said timber was cut from lands near to, adjacent, and along portions of said line of railway constructed and completed after June 8th, 1882.

6. That the line of railway of the Denver and Rio Grande Railway Company, predecessor in interest and ownership to the Denver and Rio Grande Railroad Company, had not been completed to Santa Fé, on June 8th,

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and decided in the suit against the railway company. The defendant in this case is the successor in title of the Denver and Rio Grande Railway Company, and complied with all the requirements of the act of 1875. The timber, with which it was sought to be charged, was taken early in 1886 for use as cross-ties. About one-half of this timber was taken from the public lands adjacent to the line of the company's road in Montrose County, Colorado, and was used on that portion of its line constructed after June 8, 1882. The rest of the timber was taken from public lands adjacent to the line, constructed prior to June 8, 1882, lying east of Cebolla. The court below held that the defendant had a right to take timber from public lands east of Cebolla for the purpose of repairing its line constructed prior to June 8, 1882, but had no right to take timber from that portion of the line for the purpose of constructing new switches and side tracks along the line of road completed subsequent to June 8, 1882, and for this item, amounting to \$1120, the defendant was held liable, and acquiesced in that judgment. The plaintiffs in error seek for a reversal of the judgment on the ground that it improp-

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1882, nor has said line of railway ever been so completed either by the Denver and Rio Grande Railway Company or by the Denver and Rio Grande Railroad Company.

7. That one-fourth of the ties cut, as aforesaid, were used by the Denver and Rio Grande Railroad Company upon various portions of the line of railway formerly owned by the Denver and Rio Grande Railway Company, and subsequently owned by the Denver and Rio Grande Railroad Company, and which portions were constructed and completed prior to June 8th, 1882, said ties being used for purposes of repairs.

8. That one-fourth of said timber has been used in the construction of new switches and side tracks along the line of road completed subsequent to June 8th, 1882.

9. That the remaining one-half of the ties so cut either have been or are intended to be used in the construction of new extensions of said railroad, now in process of building between Montrose and Ouray.

10. That the said Denver and Rio Grande Railroad Company has strictly complied with all the provisions of the act of Congress approved March 3d, 1875, granting railroads a right of way through the public lands, and is claiming under said act as to all road constructed since June 8th, 1882, and as to road now in process of construction.

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erly relieved defendant from liability for the rest of the timber.

We are of opinion that there was no error in the judgment of the Circuit Court, and the same is accordingly

*Affirmed.*

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WOOD v. BRADY.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 815. Submitted October 10, 1893. — Decided October 23, 1893.

The construction placed by a state court upon one statute implies no obligation on its part to put the same construction upon a different statute, though the language of the two may be similar.

The question whether an action to foreclose a lien for unpaid assessments for street improvements in San Francisco is *in rem* or *in personam*, is one upon which the decision of the Supreme Court of California is binding, and its ruling that a plaintiff who was no party to defendants' suits to foreclose, has a right to show by evidence *aliunde* the invalidity of the judgments obtained by them, is not a subject for review here.

MOTION to dismiss, or affirm. This action was originally begun by Brady in the Superior Court of San Francisco against a number of defendants, including Wood and Diggins, the plaintiffs in error, to quiet his title to two lots of land, in which it was averred that defendants claimed an interest adverse to the plaintiff. Both parties claimed title under certain assessments for street improvements and sales under proceedings to foreclose liens for such assessments. The assessments under which plaintiff claimed were prior in point of time to those under which defendants claimed, but the deeds issued to defendants antedated those under which the plaintiff claimed.

The assessments upon which plaintiff relied were recorded November 14, 1870; actions were begun against the owners of the two lots early in 1871 to foreclose the liens created by these assessments, and judgments and orders of sale were entered in both cases in January, 1882. Appeals were taken to the Supreme Court in both cases, and the judgments of the